

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES TYLER ROOTS,  
Plaintiff,

v.

G. CHERIAN, et al.,  
Defendants.

No. 2:23-cv-01175-CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

**I. Screening Requirement**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

**II. Allegations in the Complaint**

At all times relevant to the allegations in the complaint, plaintiff was an inmate at California State Prison-Sacramento (“CSP-Sac”). He alleges that on December 10, 2019, defendant Cherian deliberately and maliciously closed his arm in a cell door causing him unnecessary pain. After being advised of his injury, defendants Cherian, Hanagan, and Masterson delayed requesting medical assistance for plaintiff for three and a half hours. These same defendants were deliberately indifferent to his serious medical needs during this time period.

Plaintiff further alleges that defendants Williamson and Lynch failed to properly train their staff in matters of safety and security in their capacity as the building lieutenant and the prison warden.

Based on these factual allegations, plaintiff contends that defendants violated his Eighth Amendment rights as well as committed various state law torts of assault/battery, negligence, the intentional infliction of emotional distress, and mental/emotional injury.

By way of relief, plaintiff seeks compensatory and punitive damages.

**III. Analysis**

Having conducted the required screening with respect to plaintiff’s complaint, the court finds that plaintiff may proceed on an Eighth Amendment excessive force claim against defendant Cherian as well as an Eighth Amendment deliberate indifference claim against defendants Cherian, Hanagan, and Masterson.

With respect to the other claims and defendants, the allegations do not amount to claims upon which plaintiff may proceed because plaintiff does not sufficiently allege a causal link between defendants Williamson and Lynch, who were acting in their supervisory capacity, and

1 the asserted constitutional violations. Furthermore, this court does not have supplemental  
 2 jurisdiction over the state law tort claims because plaintiff does not allege compliance with the  
 3 California Tort Claims Act. At this point, plaintiff has two options: 1) proceed immediately on  
 4 the Eighth Amendment claims identified above; or 2) attempt to cure the deficiencies in  
 5 plaintiff's complaint in an amended complaint. In considering whether to amend, the court  
 6 advises plaintiff as follows:

7 Government officials may not be held liable for the unconstitutional conduct of their  
 8 subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009)  
 9 (“In a § 1983 suit ... the term “supervisory liability” is a misnomer. Absent vicarious liability,  
 10 each Government official, his or her title notwithstanding is only liable for his or her own  
 11 misconduct.”). When the named defendant holds a supervisory position, the causal link between  
 12 the defendant and the claimed constitutional violation must be specifically alleged; that is, a  
 13 plaintiff must allege some facts indicating that the defendant either personally participated in or  
 14 directed the alleged deprivation of constitutional rights or knew of the violations and failed to act  
 15 to prevent them. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Taylor v. List, 880 F.2d  
 16 1040, 1045 (9th Cir. 1989); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978).

17 This court has supplemental jurisdiction over any claims that are “part of the same case or  
 18 controversy....” 28 U.S.C. § 1367(a). However, “once judicial power exists under § 1367(a),  
 19 retention of supplemental jurisdiction over state law claims under 1367(c) is discretionary” since  
 20 primary responsibility for developing and applying state law rests with the state courts. Acri v.  
 21 Varian Assoc., Inc., 114 F.3d 999, 1000 (9th Cir. 1997) (en banc). Plaintiff asserts a violation of  
 22 California law, but plaintiff fails to plead compliance with the California Tort Claims Act.<sup>1</sup> To  
 23 properly allege any supplemental state law tort claim against defendants, plaintiff must present  
 24 facts demonstrating compliance with the California Tort Claims Act, rather than simply  
 25 conclusions suggesting as much. See State of California v. Superior Court of Kings County, 32  
 26 Cal.4th 1234 (2004). Even state tort claims presented in a federal civil rights action may proceed

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27 <sup>1</sup> California Government Code §§ 905.2 *et seq.* describes the procedure for filing a tort claim  
 28 against state employees and entities.

only if the claims were first presented to the state in compliance with this claim presentation requirement. See Kaim–Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 627 (9th Cir. 1988).

#### IV. Plain Language Summary for Pro Se Party

The following information is meant to explain this order in plain English and is not intended as legal advice.

Some of the allegations in the complaint state claims for relief against the defendants, and some do not. You must decide if you want: (1) to proceed immediately on the Eighth Amendment excessive force claim against defendant Cherian as well as the Eighth Amendment deliberate indifference claim against defendants Cherian, Hanagan, and Masterson; or, 2) amend the complaint to fix the problems identified in this order with respect to the remaining claims and defendants.

If you choose to file an amended complaint, pay particular attention to the legal standards attached to this order that may apply to your claims. An amended complaint should include:

- 1) The name of defendant(s);
- 2) The action(s) performed or failed to be performed by defendant(s);
- 3) The date or timeframe of the action(s);
- 4) How the action(s) caused injury to you; and,
- 5) The specific constitutional provision violated by defendant(s).

**Once you decide how you want to proceed, you must complete the attached Notice of Election form by checking only one box and returning it to the court.** When the court receives the Notice of Election, it will issue an order telling you what you need to do next. If you do not return this Notice, the court will order service of the complaint only on the claims found cognizable in this screening order and will dismiss the remaining claims and defendants pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be collected and paid in accordance with this court's order to the Director of the California

Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff is granted 21 days within which to complete and return the attached form notifying the court whether he wants to proceed on the claims identified in this order or file an amended complaint in an attempt to cure the deficiencies in his original complaint. If plaintiff does not return the form, this action will proceed on the claim described above.

Dated: November 27, 2023



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF ELECTION

**Check one:**

\_\_\_\_\_ Plaintiff wants to proceed immediately on the Eighth Amendment excessive force claim against defendant Cherian as well as the Eighth Amendment deliberate indifference claim against defendants Cherian, Hanagan, and Masterson.

**OR**

\_\_\_\_\_ Plaintiff wants time to file an amended complaint.

DATED:

Plaintiff's Signature